83-758

No.

Office Supreme Court, U.S.
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In the

Supreme Court of the United States

OCTOBER TERM, 1983

ANGELES RAMONITA GARCIA, FRANK PINEIRO, and DR. IRAIDA PINEIRO GOEPP,

Petitioner-Defendants,

vs.

UNITED STATES OF AMERICA,

Respondent-Plaintiff.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION OF PETITIONER-DEFENDANTS

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a deposit in a bank account of fraudulently obtained United States government checks operates as an immediate transfer of funds to the depositor's account so that a contemporaneous withdrawal of funds from the same account can support the imposition of a constructive trust on property obtained with the withdrawn funds.

2. Whether a constructive trust may be imposed on property when there is no showing that the specific funds used to purchase the property were fraudulently obtained but the proof does show that monies unrelated to the purchase were fraudulently obtained and there was nothing to suggest that a defendant was incapable of fraud as to the specific funds used for the purchase.

3. Whether 38 CFR Sec. 21.4202 provides for the repayment by a school of benefits received by veteran students as to whom no fraud is alleged if the school is found to have participated in fraudulently obtaining veterans benefits for other students.

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Rule 21(d) — The decision of the Court of Appeals for the First Circuit is unreported and is attached hereto as Appendix A. The decision of the District Court is reported at 532 F. Supp. 325 and is attached hereto as Appendix B.

Rule 21(e) — Jurisdiction of this court is invoked pursuant to this court's power to review a final decision of a United States Court of Appeals.

(i) The original decision of the Court of Appeals was dated June 16, 1983.

(ii) A timely Petition for Rehearing En Banc was filed and was denied by Order dated August 18, 1983.

(iv) Jurisdiction is conferred on this court by 28 USC Sec. 1254.

Rule 21(f) —

19 LPRA Sec. 362. Check defined.

> "A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this title applicable to a bill of exchange payable on demand apply to a check."

19 LPRA Sec. 366. When bank liable to holder.

> "A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless it accepts or certifies the check."

38 CFR Sec. 21.4202. (a) Overcharges.

"When it is found that a school has charged or received from any veteran or eligible person any amount in excess of the established charges for tuition and fees which the school requires from similarly circumstanced nonveterans or noneligible persons enrolled in the same course, the school may be disapproved for enrollment of any person not already enrolled in the school.

(b) Restrictions on enrollments. A school will be disapproved for further enrollments or reenrollments, and educational assistance allowance to veterans or eligible persons already enrolled will be discontinued when one or more of the following conditions has been found to exist:

(1) The school has willfully and knowingly submitted a false report or certification concerning a student or his or her course of education which has or could result in an improper payment of allowances.

(2) The school has willfully and knowingly failed to report to the Veterans Administration excessive absences, discontinuance, or interruption of education, which has resulted or could result in improper payment of allowances."

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---

PETITION OF PETITIONER-DEFENDANTS

STATEMENT OF THE CASE

This is a civil action brought by the United States of America to collect on a judgment for $1.2 million previously obtained against Mrs. Ramonita Garcia. The suit challenged title to two condominium apartments, one held by Mr. Frank Pineiro, the other by Dr. Iraida Pineiro Goepp, the son and daughter, respectively, of Mrs. Garcia, and alleged that these apartments should right-

fully be in the name of Ramonita Garcia and hence available to it to satisfy the judgment. The District Court of Puerto Rico, Honorable Juan R. Torruella presiding, sitting without a jury, decided in favor of the Plaintiff; this decision was affirmed by the United States Court of Appeals for the First Circuit.

The prior judgment against Mrs. Garcia was based upon Mrs. Garcia's admission in criminal proceedings that she had defrauded the United States government of $600,000 by causing the government to pay this amount in G.I. Bill benefits to students whom she falsely certified were enrolled in, and attending classes at, the barber and cosmetology school (hereafter called the Academia) she operated in Puerto Rico. The government collected almost $500,000 of the $1.2 million judgment but was unable to obtain the balance because Mrs. Garcia was indigent. The government then brought this action against Mr. Frank Pineiro and Dr. Iraida Goepp claiming that an apartment, IOA, had been transferred in fraud of the plaintiff by Mrs. Garcia to Frank Pineiro for no consideration and while she was indebted to the plaintiff, and that an apartment, 12E, had been purchased with funds that had been fraudulently obtained from the plaintiff and that a constructive trust should be imposed in favor of the plaintiff even though the property was held by Dr. Iraida Goepp.

At trial the plaintiff produced the following proof as to the 12E conveyance. The purchase price was $120,000 which was paid in two installments. On September 24, 1975, a certified check for $25,000 was purchased by Mr. Frank Pineiro from the First Federal Savings and Loan Association of Puerto Rico (hereafter called the bank) and was delivered to the realty company as the first in-

stallment. The check contained the numbers C-20516 on the stub and the notations "Ex. due" and "Frank E. Pineiro." On the same day a number of government checks were deposited in the bank account of the Academia. The checks totalled less than $25,000 and contained the certificate number reference of 20516. The assistant bank manager testified that the notation "Ex. due" meant that the certified check was paid for in cash or checks, and that in his opinion (he had not personally handled either transaction) the government checks had to do with the cashier's check because "the date is the same and the amount of the check, the total and reference that they use in the voucher is the same and they put that on the back of the check."

On November 15, 1975, a certified check for $95,000 was purchased from the bank and was used to pay the balance of the purchased price of 12E. The stub of the check contained the initials ED which denoted that the check had been purchased by cash or check. On the same day a number of government checks totalling "ninety four thousand something more or less" were deposited at the bank. The checks were endorsed by the payee and by Mrs. Ramonita Garcia and stamped on the back appears "Deposit to the Account of 1st Federal Savings and Loan Association of Puerto Rico . . . November 15, 1975." The checks contained no reference number. The assistant bank manager testified that he did not personally handle either the deposit or the issuance of the certified check, and he had no actual knowledge as to what funds were used to purchase the $95,000 check, but that in his opinion the government checks were used to buy the certified check.

The assistant bank manager also testified that if payment for a certified check were made by check the customer must have an account with a balance sufficient to cover the amount of the certified check, and a hold would be placed on the account in that amount. This was so even if the deposit was government checks.

To prove its claim that 12E was purchased with fraudulently acquired funds the Plaintiff introduced the following proof. It showed that, pursuant to a plea bargain, Mrs. Garcia had pled guilty to three counts of an indictment including conspiracy to defraud the United States government. This conspiracy to defraud, charged against Mrs. Garcia in count 75 of the indictment, involved allegations of fraudulent enrollment, misrepresentation of student enrollment, backdating and falsification of attendance sheets, fraudulent claims as to dependents, concealment of the fraud, and submission of false information about the instructors at the school, all in connection with veteran students who were claiming benefits under the G.I. Bill. The conspiracy alleged continued from June 1, 1974 to October 19, 1976. Count 75 incorporated the allegations of the prior 74 counts each of which alleged wrongdoing with respect to a specific named student.

The government introduced Mr. Garcia's answers to the plaintiff's Requests for Admission in which she admitted many of the allegations of fraud and mismanagement at the school. Specifically, she admitted that students receiving V.A. benefits had their enrollment certificates backdated and that they paid the school approximately $100 plus $80 for each month the form was backdated; she admitted that she charged veteran students a fee of approximately 1% to cash their V.A.

benefits check; and she admitted that Mr. Frank Pineiro often assisted Garcia at the school by distributing V.A. checks and collecting payments from the students.

The government also introduced copies of the government checks, payable to individual students, which were deposited at the bank on September 24 and November 15, 1975. Eight of these one hundred and seventy eight checks were payable to students whose names appeared in the indictment to which Mrs. Garcia pled guilty. The plaintiff acknowledged that some students who attended the Academia were bona fide. The plaintiff also produced additional evidence that veterans cashed their government checks at the Academia.

Based upon this evidence the District Court found that the source of most of the funds used to purchase the $25,000 certified check was twenty seven United States government checks totalling just over $24,000 and the source of the funds to purchase the $95,000 certified check was one hundred and fifty checks totalling over $95,000. The court held that by reason of the fraudulent acts of Mrs. Ramonita Garcia the Academia would have been disqualified from participating in the V.A. education benefits program and that therefore all of the government's checks used to purchase the cashier's checks were wrongfully obtained. The court imposed a constructive trust on 12E and ordered that it be conveyed to the plaintiff.

ARGUMENT

I. THE HOLDING OF THE FIRST CIRCUIT COURT OF APPEALS THAT A DEPOSIT OF U.S. GOVERNMENT CHECKS OPERATES AS AN IMMEDIATE TRANSFER OF FUNDS TO THE DEPOSITOR IS CONTRARY TO PUERTO RICAN AND UNIFORM NEGOTIABLE INSTRUMENT LAW.

The plaintiff's constructive trust theory rose or fell on whether it could show that the one hundred and seventy eight government checks were used to purchase the two certified checks. Since a constructive trust requires a tracing of specific funds, *Sonnenschein* v. *Reliance Insurance Co.*, 353 F.2d 935, 936-7 (2nd Cir. 1965), and since plaintiff produced no proof as to the source of funds in the Academia's bank account other than the one hundred and seventy eight checks, there could be no constructive trust imposed if the one hundred and seventy eight checks did not purchase the cashier's check and hence the condominium.

The Puerto Rico Uniform Negotiable Instrument Act, 19 LPRA Sec. 1 et seq. provides that a check "does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check." 19 LPRA Sec. 366. There was no evidence here that the bank accepted or certified the checks. And, it is basic negotiable instrument law that "where one deposits a check or other paper for collection, there is ordinarily created a relation of principal and agent between depositor and bank." Michie, *Banks*

and Banking, Ch. 9, Sec. 25, p. 55 (1973) i.e. the bank is the agent of the depositor for the purpose of collecting the money from the maker of the check. If the agent is successful the relationship changes and becomes one of debtor (the bank) and creditor (the depositor). This relationship may be changed by contrary agreement of the parties, but ordinarily, "Where one deposits in a bank a check or draft on a third party it is a bailment, unless the understanding be that (the depositor) may at once draw against the deposit. . ." Michie, *Banks and Banking*, Ch. 9, Sec. 25, p. 56 (1973).

It was clear in this case that there was not a contrary agreement. On the contrary, the bank manager was emphatic that there could not be a withdrawal of the funds evidenced by the government checks until those checks had been paid by the United States and the money received by the bank.

The Court of Appeals' decision necessarily involves holding that at the time of deposit the bank had become a holder in due course of the government checks—that it had given value for the checks and that this value was ultimately used to purchase the condominium. Such a holding overturns decades, if not centuries, of negotiable instrument law. See e.g. *Thompson* v. *Sioux Falls National Bank*, 150 U.S. 231 (1893); *Lanier* v. *Nash*, 121 U.S. 404 (1886); *Commercial National Bank* v. *Armstrong*, 148 U.S. 50 (1892); *Sweeney* v. *Easter*, 68 U.S. 166 (1863); *Kane* v. *First National Bank*, 6 F.2d 339 (8th Cir. 1925); *American Sugar Refining Co.* v. *Anderson*, 20 F.Supp. 55 (D. Ct. Ky.) aff'd 107 F.2d 948 (6th Cir. 1939); *Lowrance Motor Co.* v. *First National Bank*, 238 F.2d 625 (5th Cir. 1975); see also 10 Am. Jur. 2d, *Banks*, Sec. 402 et seq.; 11 Am. Jur. 2d,

Bills and Notes, Sec. 339 et seq. Obviously, if the bank had not given value when the certified checks were purchased the certified checks could not be purchased with that value, and the plaintiff's constructive trust theory is a shambles.

It is important that this court grant certiorari to resolve the contradiction between this decision of the Court of Appeals and prior decisions of this court and other Circuit Courts of Appeal.

II. THE IMPOSITION OF A CONSTRUCTIVE TRUST WHERE THERE WAS NO SHOWING THAT MONIES USED TO PURCHASE 12E WERE FRAUDULENTLY OBTAINED CONFLICTS WITH WELL-ESTABLISHED LAW AS TO THE PLAINTIFF'S BURDEN OF PROOF.

Petitioner-defendants pointed out to the Court of Appeals that the Plaintiff's theory of the case was factually impossible. On the one hand, the evidence introduced by the plaintiff showed that the Academia would cash the veterans' checks, retaining 1% plus tuition and other charges, and returning the balance to the veteran. On the other hand, the scenario suggested by the plaintiff as to 12E necessarily involved the Academia confiscating the entire amount of the veteran's check and returning nothing to him or her. Petitioners pointed out that there was a complete absence of any proof, or even any suggestion, that such wholesale confiscation had taken place. No veterans testified at trial, no charges of theft from students were ever brought. There was, in short, a gaping hole in the plaintiff's proof. Their own evidence disproved their theory.

The Court of Appeals responded to petitioners' argument by claiming that "There was nothing to suggest Garcia was incapable of (massive theft from the veteran students themselves)." Whether or not this claim is accurate, it totally reverses what should be the burden of proof and calls upon defendant Dr. Goepp (who has never been in the slightest way implicated in any charges of fraud or wrongdoing) to introduce proof to rebutt allegations that were never even made by the plaintiff. It calls upon the defendants to prove that a constructive trust should not be imposed.

This has never previously been the law and expressly conflicts with the decisions of other circuits. The plaintiff who seeks to impose a constructive trust "must assume the burden of ascertaining and tracing the trust property." *Sonnenschein* v. *Reliance Insurance Co.*, 35 F.2d 933, 936 (2nd Cir. 1965). It has sometimes been said that such a plaintiff

> "has the burden of establishing facts which give rise to such a trust, and he must establish such facts by *clear and convincing evidence* since it is not enough to establish them by a mere preponderance of the evidence."
>
> *In Re Las Colinas, Inc.*, 294 F.Supp. 582 (D.C. P.R. 1968) (emphasis supplied) rev'd on other grounds, 426 F.2d 1005.

See also *National Waste Co.* v. *Spring Packing Corp.*, 200 F.2d 14 (7th Cir. 1952), and *Shapiro* v. *Rubens*, 166 F.2d 659 (7th Cir. 1948). If the evidence is doubtful or capable of reasonable explanation upon a theory other than the existence of a trust then the proof is insufficient and no trust should be imposed. *Jacobs* v. *Shell Oil Co.*, 196 F.2d 855, 858 (7th Cir. 1952). At the

very least the plaintiff bears the burden of proof. *New Amsterdam Casualty Co.* v. *Waller*, 301 F.2d 839 (4th Cir. 1962).

It has never previously been held that a constructive trust could be imposed merely because nothing suggested its impossibility.

The Court of Appeals' decision is directly at odds with other Court of Appeals' decisions considering the burden of proof in constructive trusts. Certiorari should be granted to resolve this conflict.

III. THE COURT OF APPEALS HOLDING THAT 38 CFR SEC. 21.4202 PROVIDES FOR THE REPAYMENT BY A SCHOOL OF BENEFITS RECEIVED BY VETERAN STUDENTS AS TO WHOM NO FRAUD IS ALLEGED IF THE SCHOOL IS FOUND TO HAVE PARTICIPATED IN FRAUDULENTLY OBTAINING VETERANS' BENEFITS FOR OTHER STUDENTS IS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT.

The Court of Appeals' decision endorsed the District Court's interpretation of 38 CFR Sec. 21.4202. This interpretation is unwarranted and exposes schools which have G.I. Bill students to almost limitless liability based on a single act of wrongdoing. The words of the regulation do not support such an interpretation.

Plaintiff acknowledged that there were legitimate veteran students attending the Academia during the period of the conspiracy to which Mrs. Garcia pled guilty. To support their allegations of fraud as to specific veteran payees the Plaintiff rested entirely on Mrs. Garcia's guilty plea in the criminal case and particularly

her guilty plea to the conspiracy to defraud which incorporated the allegations of the prior seventy four counts, each of which alleged wrongdoing with respect to a specific named student. No evidence was ever produced, at the trial of this matter or in any other judicial proceedings, to show that there was wrongdoing in connection with any specific veteran payees other than those listed in the indictment.

At the close of its case plaintiff was forced to concede that only eight checks, out of the one hundred and seventy eight, were payable to veterans whose names appeared in the indictment. The plaintiff claimed, however, that it was absolved from the necessity of tracing specific funds because of V.A. regulations which, according to the plaintiff, provided that the Academia "would have been disapproved" for veteran enrollment under the G.I. Bill had the V.A. known of the manner in which the school was run.

No authority was cited by the plaintiff for its interpretation of these regulations. In affirming the judgment for the plaintiff the Court of Appeals approved the plaintiff's position but provided no explanation of its reasoning.

The V.A. regulations in question, however, provide for prospective disapproval but not for retroactive disqualification and the consequent obligation to repay benefits obtained by entirely legitimate students.

38 CFR Sec. 21.4202, entitled "Overcharges—Restrictions on Enrollments," provides in relevant part as follows:

(a) Overcharges. When it is found that a school has charged or received from any veteran or eligible person any amount in excess of the established charges for tuition and fees which the school requires from similarly circumstanced nonveterans or noneligible persons enrolled in the same course, the school *may be disapproved for enrollment of any person not already enrolled in the school.*

(b) Restrictions on enrollments. *A school will be disapproved for further enrollments or reenrollments,* and educational assistance allowance to veterans or eligible persons already enrolled *will be discontinued* when one or more of the following conditions *has been found to exist*:

(1) The school has willfully and knowingly submitted a false report or certification concerning a student or his or her course of education which has or could result in an improper payment of allowances.

(2) The school has willfully and knowingly failed to report to the Veterans Administration excessive absences, discontinuance, or interruption of education, which has resulted or could result in improper payment of allowances.

(Emphasis added.)

The regulation is quite clear in providing that the school *may* be disapproved for *new enrollments* if the school has overcharged veterans and that the school *will* be disapproved for further enrollment and allowances to persons already enrolled *will* be discontinued if it has been found that the school has willfully and knowingly submitted false reports or certifications to the V.A. There is absolutely no provision for a retroactive disqualification of the school or the students. The disqualification takes effect only after the false reporting has been found to exist.

Under the plaintiff's theory, now adopted by the Court of Appeals, a single instance of willful misreporting makes a school liable to repay all benefits thereafter received by veteran students even though those benefits were obtained by a legitimate student, not the school, and were used and were received by the veteran in an entirely proper manner. The court has thus approved a definition of the regulations where a single wrongful act by a school can, at the sole discretion of the United States, submit that school to crippling liability. No longer is the school liable only for its wrongful acts. Under the definition of the regulations adopted by the Court of Appeals this liability can extend indefinitely and involve an infinite amount of money.

The words of the regulation cannot support such an expansive definition of fraud. Until willful misreporting was found to exist, the Academia was duly approved for G.I. enrollment. If benefits for specific students were wrongfully obtained then the plaintiff was entitled to recover the moneys it paid on behalf of these students. Plaintiff showed that eight checks were obtained by students named in the indictment. The amount reflected in those eight checks should, therefore, have been the limit of any interest plaintiff could claim in 12E under the constructive trust theory.

The question of federal law decided by the Court of Appeals has important implications for any school which has students who receive benefits under the G.I. Bill. This court should grant certiorari to consider whether the Court of Appeals' interpretation is warranted by the words of the regulation or by sound public policy.

CONCLUSION

Petitioners request that this court grant this Petition for a Writ of Certiorari and place this case on its calendar for plenary consideration of the important issues raised.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 81-1894

UNITED STATES OF AMERICA,
Plaintiff, Appellee,

v.

ANGELES RAMONITA GARCIA, ET AL.,
Defendants, Appellants.

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO
[Hon. Juan R. Torruella, *U.S. District Judge*]

Before

Campbell, *Chief Judge*,
Aldrich, *Circuit Judge*,
and Bonsal,* *District Judge*.

John L. Stainthorpe for appellants.

Paul A. Blaine, Attorney, Civil Division, Department of Justice, with whom *J. Paul McGrath*, Assistant Attorney General, and *Jane A. Restani*, Attorney, Civil Division, Department of Justice, were on brief, for appellee.

June 16, 1983

* Of the Southern District of New York, sitting by designation.

Per Curiam. Defendant Angeles Ramonita Garcia, between June 1974 and October 1976, conducted a massive fraud against plaintiff United States by operating a phony barbering and cosmetology school for veterans, who received, and turned over, veterans' benefits checks, but received little or no schooling. By complicity with the recipients a great number of checks ended up in Garcia's hands as a complete fraud. On the evidence presented in this civil action — Garcia was incarcerated as a result of completed criminal proceedings — the court found that two certain condominiums, known as Apartments 10-A and 12-E, standing in the names of defendants Frank Pineiro and Iraida Pineiro Goepp, Garcia's son and daughter, respectively, were acquired by them without consideration, and were reachable, except for the interests of certain bona fide mortgages, by plaintiff as Garcia's creditor. We have reviewed the record appendix and briefs, and affirm the judgment below, basically on the court's opinion. Only a few comments are called for.

The style of the defendants' appeal is set by their claim that the court committed an abuse of discretion by refusing a continuance sought because of Garcia's and Pineiro's claimed illnesses. A trial date of August 17 had been set in April. A week before trial a continuance was sought because these defendants, resident in Georgia and Virginia, were grounded by an air controllers' strike. This motion proving ill founded, their counsel then reported that one had the flu, and the other was undergoing cancer treatment. No support of any kind was offered for counsel's hearsay statement. Defendants have the affrontery to fault the court for not "attempting to discover whether the motion for continuance was well founded." (Br. 33) The burden was not on the court.

Defendants' other claims are equally unpersuasive. Apartment 10-A had concededly belonged to Garcia; the issue is whether she conveyed it without consideration. The deed recites that Pineiro paid $50,000 therefor.

Interviewed by a government agent before being named as a defendant, Pineiro, according to the agent, admitted he had not paid $50,000, but said he had given "other consideration." At the trial, the agent having testified to this conversation, defendants say that, as he was the government's own witness, it must stand that Pineiro did give "other consideration." The reason for the false statement in the deed does not appear.

At the trial funds seemingly materialized from all over, with loans from aunts and others, and money supplied by Goepp's now deceased father to assist her, although they had no speaking relationship. Goepp assertedly sent $25,000 cash to Puerto Rico in a parcel post package from Chicago—not even registered—her customary method, because she had had trouble with checks.

Further, the court was not supposed to believe that Garcia obtained cashier's checks from the bank in exchange for government checks payable to the veterans because that would mean there had been a massive theft from the veteran students themselves. There was nothing to suggest Garcia was incapable of this. In any event, it is quite apparent that she made improper deals to obtain government money.

If the court had disbelieved all the government evidence, believed defendants, and rejected all inferences favorable to the government, defendants might have succeeded on this appeal. Instead, it chose to do the opposite. This it had a right to do. We see no reason to write further, and we rest on the court's findings.

Affirmed.

APPENDIX "A"

Appendix A was misplaced. As soon as it is located, a copy will be forwarded to the Supreme Court of the United States.

APPENDIX "B"

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANGELES RAMONITA GARCIA, et al.,

Defendants.

Civ. No. 78-1005.

United States District Court,

D. Puerto Rico.

Nov. 30, 1981.

J. Rodger Edgar, Raymond E. Hopkins, Paul A. Blaine, Civ. Div., Dept. of Justice, Washington, D.C., for plaintiff.

Luis F. Abréu Elias, Rio Piedras, P.R., for defendants.

DECISION AND ORDER

TORRUELLA, District Judge.

This case is the aftermath of two other proceedings before this Court.

In *United States* v. *Angeles Ramonita Garcia,* Cr.No. 76-153, Defendant Angeles Ramonita Garcia (hereinafter "Defendant Garcia"), plead guilty and was convicted of conspiring to defraud the United States while engaged in a scheme involving tuitions paid by the Veteran's Administration (hereinafter "VA") to a school owned and operated by her. Subsequently, in *United States* v. *Angeles Ramonita Garcia,* Civil Number 76-

1417, Defendant Garcia was adjudged indebted to the United States in the amount of $1.2 million by reason of the aforementioned scheme.

The present case reflects efforts by the United States to collect on said civil judgment by challenging the title to two condominium apartments which Plaintiff claims should rightfully be in Defendant Garcia's name. As to the first of these apartments, Apartment 10-A, located at Condominium Laguna Terrace, #6 Joffre St., Condado, Santurce, Puerto Rico (hereinafter "Apartment 10-A"), it is claimed by Plaintiff that Defendant Garcia transferred title to the same to her son, Defendant Frank E. Pineiro (hereinafter "Defendant Pineiro"), during the period of time in which the fraudulent enterprise was in operation,[1] said transfer being without any consideration ("causa") and thus in fraud of Defendant Garcia's creditors, namely the United States. The allegation regarding the second apartment, Apartment 12-E of the same Condominium building (hereinafter "Apartment 12-E"), is to the effect that Defendant Garcia purchased said apartment acting as attorney-in-fact for her son and daughter, Defendants Pineiro and Goepp[2] respectively, in whose names Defendant Garcia caused title to be placed, with funds fraudulently obtained from Plaintiff as a result of the aforementioned scheme. The United States claims that said actions create an equitable interest on its behalf in Apartment 12-E which may be enforced by resort to the principles of a constructive trust.

After a full trial, and upon consideration of the record as a whole, this Court makes the following

---

[1] The established duration of the conspiracy as charged in the indictment to which Defendant Garcia plead guilty was between June 1, 1974 continuing through October 19, 1976.

[2] Iraida Pineiro Goepp, herein called "Defendant Goepp."

FINDINGS OF FACT

1. This is a civil action brought by the United States of America as Plaintiff.

2. Defendant has carried out business transactions within Puerto Rico, and was the named title holder of real property located in Puerto Rico which is the subject of this action.

3. Defendants Pineiro and Goepp are named title holders of real property located in Puerto Rico which is the subject of this action.

4. Defendants Angel Rivera Colon, Sandel Felipe Garcia, Aracelis Martinez, Flor Maria Garcia, Tomas del Carmen Garcia Gonzalez, and John Doe are persons having a security interest in real property located in Puerto Rico which is the subject of this action.

5. Defendant Garcia was, at the commencement of this action on June 2, 1978 incarcerated at the Federal Correctional Institution, Alderson, West Virginia, where she was serving a sentence imposed by this Court on November 18, 1977, following her conviction in the case of *United States* v. *Angeles Ramonita Garcia*, Criminal Number 76-153 (D.P.R.).

6. Defendant Garcia was engaged in business as the owner of Academia Puertorriquena de Belleza (hereinafter, Academia) from approximately June 1974 until the commencement of this action on June 2, 1978.

7. Plaintiff commenced a civil action against Defendant Garcia on November 9, 1976 under Civil Number 76-1417 of the docket of this Court to recover double its damages under the False Claims Act, 31 U.S.C. §§ 231-235, based on the allegations contained in the complaint filed in said case.

8. As a consequence of a summary judgment entered against Defendant Garcia in Civil Number 76-1417, De-

fendant Garcia is indebted to Plaintiff as explained below.

9. On January 18, 1878, Plaintiff recovered a partial judgment against Defendant Garcia in that action in the amount of $1,200,000.00 of which Defendant Garcia has satisfied $494,862.55.

10. Defendant Garcia has no economic means and is otherwise indigent.

A—APARTMENT 10-A

11. Prior to her imprisonment, Defendant Garcia resided at Apartment 10-A.

12. Defendant Garcia was the registered owner of Apartment 10-A from June 6, 1963 until February 24, 1976.

13. On February 24, 1976, Defendant Garcia conveyed title to Apartment 10-A to Defendant Pineiro, her son, by deed No. 14, executed on the same date in Bayamon, which deed is recorded with the Registrar of Real Estate of Puerto Rico, First Section of San Juan, at folio 24, volume 483 of Santurce North.

14. The deed of conveyance from Defendant Garcia to Defendant Pineiro does not recite that the consideration therefor (i.e., $50,000) was paid by Defendant Pineiro to Defendant Garcia in the presence of the attesting notary, Rafael Pacheco Rivera.

15. In fact, consideration for the conveyance of Apartment 10-A was not paid by Defendant Pineiro to Defendant Garcia in the presence of the attesting notary, Rafael Pacheco Rivera.

16. Furthermore, as admitted by Defendant Pineiro, during the course of an interview on October 5, 1976 between Defendant Pineiro and Special Agent B. Gene Wyatt of the Federal Bureau of Investigation, Defendant Pineiro did not pay Defendant Garcia any of the stipu-

lated $50,000 consideration in return for the conveyance of title to Apartment 10-A to him by Defendant Garcia.

17. Defendant Garcia, by her own admission, and from the evidence adduced in Criminal Number 76-153 and Civil Number 76-1417, was indebted to Plaintiff at the time of the conveyance of Apartment 10-A to her son, Defendant Pineiro.

18. On June 28, 1976 Defendant Pineiro executed three bearer notes, affidavit numbers 4976, 4977 and 4978, in the amount of $25,000.00 each, with interest at 8%, maturing consecutively on June 28, 1982, 1984 and 1986, which notes were secured by a mortgage deed, number 32, also executed on June 28, 1976, against Apartment 10-A, which deed is recorded with the Registrar of Real Estate of Puerto Rico at folio 24, volume 483 of Santurce North, Farm 17779, third inscription.

19. Mortgage deed number 32 was received for recording by the Registrar of Real Estate on January 31, 1977.

20. Bearer note number 4976 was cancelled on November 7, 1978, by Defendant Pineiro acting as the executor and sole beneficiary of the estate of Norman G. Long, the original owner of that note.

21. Neither bearer notes 4976, 4977 and 4978, nor mortgage deed number 32, recite that consideration in return for the creation and tendering of any of them was paid by anyone in the presence of the attesting notary, Luis A. Maldonado Soto.

22. Defendant Garcia was the owner of one of the remaining bearer notes, 4977 or 4978.

23. Defendant John Doe, against whom default was entered herein on September 10, 1981, was the owner of the other remaining bearer note.

B—APARTMENT 12-E

24. On September 17, 1975, Defendant Garcia entered an agreement to purchase Apartment 12-E from Milton and Estella Webb de Toppel for the purchase amount of $120,000.

25. The agreement to purchase Apartment 12-E was signed by Defendant Garcia, acting with separate powers of attorney given her by Defendants Goepp and Pineiro, to act on their behalf.

26. Defendant Garcia provided a deposit on September 17, 1975, towards the purchase of Apartment 12-E by a personal check in the amount of $6,000 which was returned to her unnegotiated on September 24, 1975, by Trans Indies Realty & Investment Corp. (hereinafter, TIRI), the broker transacting the sale of Apartment 12-E.

27. On September 24, 1975, Defendant Pineiro provided TIRI with a cashier's check, number 187204, issued by the First Federal Savings & Loan Association of Puerto Rico (hereinafter First Federal) to Defendant Pineiro on that date, in the amount of $25,000, which was utilized to provide the deposit towards the purchase of Apartment 12-E.

28. The above cashier's check was deposited to the credit of TIRI's escrow account (number 110891) maintained at First Federal, on September 25, 1975.

29. The source of most of the funds for the purchase of the above cashier's check was 27 checks issued by the United States Treasury, totalling $24,076.87, to payees receiving V.A. education benefits, who were at that time represented by Defendant Garcia to V.A. as then being students enrolled at the Academia receiving educational training.

30. Each of those 27 Treasury checks bears the purported endorsement of the payee, and the actual endorsements of Defendants Garcia and Pineiro.

31. On November 15, 1975, First Federal issued cashier's check number 188786, payable to "Mr. Topper" (sic) in the amount of $95,000.

32. Cashier's check number 188786 was purchased in the names of Defendants Goepp and Pineiro, utilizing as the source of the funds for such purchase, 151 checks issued by the United States Treasury, totalling $95,382.16, to payees receiving V.A. education benefits who were at that time represented by Defendant Garcia to the V.A. as then being students enrolled at the Academia receiving educational training.

33. Each of the Treasury checks referred to in the preceding paragraph bears the purported endorsement of the payee, and the actual endorsement of Defendant Garcia.

34. Title to Apartment 12-E was conveyed on December 1, 1975 by Milton and Estella Webb de Toppel to Defendants Pineiro and Goepp.

35. On December 1, 1975, First Federal issued cashier's check number 189160, payable to Security National Life Insurance in the amount of $16,199.42.

36. Cashier's check number 189160 was purchased by TIRI utilizing as the source of funds for such purchase its escrow account (number 110891) maintained at First Federal.

37. In return for the conveyance of title to Apartment 12-E on December 1, 1975, Defendant Garcia tendered First Federal cashier's check 188786 to Milton Toppel, and TIRI tendered First Federal cashier's check 189160 to Security National Life Insurance in satisfaction of the first mortgage then held by it.

38. The balance of proceeds of First Federal cashier's check 187204 was distributed as follows: $6,000 retained by TIRI as commission; $2,800.58 tendered by TIRI to Milton Toppel on December 1, 1975.

39. Deed of Sale and Purchase dated December 1, 1975, recorded with the Registrar of Real Property of Puerto Rico, First Section at folio 203, volume 479, farm number 17715 of Santurce North, conveys title to Apartment 12-E to Defendants Pineiro and Goepp.

40. During the period between June 1, 1974 and October 19, 1976 the date of her indictment, Defendant Garcia was knowingly involved in, participated in, and orchestrated a conspiracy to defraud the United States by fraudulently enrolling veterans at the Academia, the manner and means of which conspiracy was accomplished by fasely certifying enrollments and attendance of veterans at the Academia, and by providing illegal payments and gratuities to an employee of the V.A. Among others, Defendant Garcia's actions included: (a) the use of advertising and the payment of a finders fee, and enrollment of more veteran students than the Academia could accommodate, (b) the failure by the Academia to require attendance of the veteran students enrolled and concealment of large number of absences by falsifying and misrepresenting attendance information in submissions to the V.A. including the Quarterly Certification of Attendance, the master attendance sheets and other documents, (c) the submission of false Certification of Attendance Cards (V.A. Form 22-6553a, or 21E-6553a) to the V.A. on which cards Defendant Garcia certified that the named veteran student was absent from the Academia only on the days listed on the card during the period specified on the card, when in truth and in fact, the named veteran student had been absent in excess of the days certified by Defendant Garcia, with the knowledge by said Defendant Garcia that based on the statements made on the Certificate of Attendance Cards, the V.A. would issue checks to the veteran students enrolled at the Academia, (d) the backdating and falsifying, directly and through others, of the "Hoja de Asistencia" to falsely represent the attendance of veteran students, thereby concealing their non-attendance to the Academia from the

V.A. (e) counseling and advising the veteran students to falsely claim dependents on V.A. Form 509, Statement of Dependency, which were submitted to the V.A., (f) counseling and advising the veteran students to conceal the backdated enrollment, the lack of attendance and the various fees charged, from the V.A., its compliance officers, its investigators and the Federal Bureau of Investigation, warning the enrollees that their benefits would be terminated if they cooperated with the above officers and employees of the United States and truthfully identified the backdated enrollment, the lack of attendance and the existence of the fraudulent fees, (g) preparing and submitting false and fraudulent information to the V.A. concerning the identity and the number of the instructors, the number of veteran students actually attending the school, and the courses actually offered by the school.

41. During the period between January 1, 1975 and March 1, 1976, Defendant Garcia knowingly submitted false enrollment information to the V.A. for veteran students enrolled at the Academia.

42. During the period between January 1, 1975 and March 1, 1976, Defendant Garcia knowingly submitted false attendance information to the V.A. for veteran students enrolled at the Academia.

43. During the period between June 1975 and November 1976, the regular pattern of attendance by veterans enrolled at the Academia varied depending on the time of the month: (a) during the first few days of each month so many veterans came to the Academia that an overflow situation existed, and it was very difficult to hold classes, (b) very few students were in regular attendance for the remainder of the month, (c) great numbers of veteran students came to the Academia during the early days of each month to collect their V.A. education benefits checks which were sent directly to the school.

44. On many occasions, Defendant Pineiro was present at the Academia during the early days of each month to assist in the handing out of V.A. education benefits checks, and depositing receipts to accounts then maintained by Defendant Garcia at First Federal.

45. During the period between January 1, 1975 and March 1, 1976, the Academia had two classrooms totalling 2000 square feet which were used on a regular basis.

46. During the period between January 1, 1975 and March 1, 1976, the Academia had on the average no more than nine barber chairs for instructional use.

47. During the period between January 1, 1975 and March 1, 1976 the Academia had on the average no more than 13 hair dryers for instructional use.

48. During the period between January 1, 1975 and March 1, 1976, the Academia had on the average no more than 55 students desks for instructional use.

49. During the period between January 1, 1975 and March 1, 1976, the Academia had on the average no more than six practice tables for instructional use.

50. Defendant Garcia did not acquire additional space for students attending the Academia until approximately February, 1976, when she rented a building which used to be a kindergarten.

51. Defendant Garcia did not replace the kindergarten furniture in the newly acquired area with that suitable for her adult students.

52. During the period September through November, 1975, between 914 and 1168 veterans were enrolled as students attending the Academia and receiving monthly educational benefits checks from V.A.

53. During the period between January 1, 1975 and March 1, 1976, in order for the veteran students to receive V.A. benefits while attending the Academia they had to

have been enrolled at and attending the Academia for the time period for which retroactive benefits were requested.

54. During the period between January 1, 1975 and March 1, 1976, in order for the veterans to receive V.A. benefits while attending the Academia they were not allowed to enroll in one institution and attend classes at another without formally notifying V.A.

55. During the period between January 1, 1975 and March 1, 1976, V.A. regulations [38 C.F.R. 21.4202(b)(1) and (2) (1975)] provided that the Academia would have been disapproved for enrollment if the Academia knowingly falsified information on the veteran-student's V.A. enrollment or attendance certification forms which were completed by the Academia causing an improper payment of V.A. benefits.

56. During the period between January 1, 1975 and March 1, 1976, V.A. regulations [38 C.F.R. 21.4202(a) (1975)] provided that the Academia would have been disapproved for enrollment if the Academia charged veteran-students fees which were not charged students who did not receive V.A. benefits.

57. During the period between January 1, 1975 and March 1, 1976, as owner and directress of the Academia, Defendant Garcia knew that if veteran students or the Academia did not comply with the regulations set forth in paragraphs 55-56 above, the veteran students would be ineligible for V.A. benefits for use at the Academia.

58. During the period between January 1, 1975 and March 1, 1976, students receiving V.A. benefits at the Academia had their enrollment certification forms backdated by the Academia so that they could receive V.A. benefits for a period of time before they had actually enrolled at the Academia.

59. During the period between January 1, 1975 and March 1, 1976, students receiving V.A. benefits paid the

Academia an extra fee of approximately $100 to have their enrollment certification forms backdated.

60. During the period between January 1, 1975 and March 1, 1976 Defendant Garcia charged the veteran students $80 a month tuition for each month their enrollment form had been backdated.

61. During the period between January 1, 1975 and March 1, 1976, Defendant Garcia paid or caused to be paid to Ismael Rivera Vazquez, an employee at V.A. during the period January 1, 1975 through March 1, 1976, certain sums for processing V.A. forms for veteran students who would not otherwise have received V.A. benefits for attending the Academia during that same period.

62. On June 28, 1976, Defendants Pineiro and Goepp executed five bearer notes, affidavit numbers 4971, 4972, 4973, 4974, 4975, in the amount of $25,000 each, with interest at 8%, maturing consecutively on June 28, 1977, 1978, 1979, 1980 and 1981, which notes were secured by a mortgage deed, number 31, also executed on June 28, 1976, against Apartment 12-E, which deed is recorded with the Registrar of Real Property of Puerto Rico at folio 205, volume 479 of Santurce North, farm 17715, fourth inscription.

63. The above mortgage deed was received for recording by the Registrar of Real Estate on January 31, 1977.

64. Bearer note number 4974 is owned by Defendant Angel Rivera Colon.

65. Bearer note number 4975 is owned jointly by Defendants Sandel Felipe Garcia, Arcelis Martinez and Flor Maria Garcia.

66. Bearer note 4973 is owned by Defendant Tomas del Carmen Garcia Gonzalez.

67. Bearer notes 4971 and 4972 were cancelled of record on September 26, 1978. Those notes had been owned by Defendant Garcia.

68. Apartment 12-E has been leased to Milton Toppel since December 1, 1975 until the present, during which time he has paid rents to Defendants Pineiro, Goepp and Garcia.

69. Milton Toppel has paid the following rents per month during the corresponding indicated periods:

December 1, 1975 through April 1976—$800/mo.

May 1, 1976 through January 1977—$875/mo.

February 1, 1977 through December 1978—$1200/mo.

January 1, 1979 through December 1979—$1400/mo.

January 1, 1980 through December 1980—$1500/mo.

January 1, 1981 to present—$1700/mo.

CONCLUSIONS OF LAW

A. This Court has jurisdiction over the subject matter of this action. 28 U.S.C. § 1345.

B. This Court has jurisdiction over the persons of all Defendants. Rule 4(e), Federal Rules of Civil Procedure; 32 L.P.R.A., Rule 4.7(a).

I. APARTMENT 10-A

[1] C. The conveyance of Apartment 10-A by Defendant Garcia to Defendant Pineiro was made without consideration ("causa") being provided therefor. 30 L.P.R.A. § 65; *Sosa* v. *Fidalgo*, 56 P.R.R. 48, 51-53 (1940); *Colon* v. *Schluter*, 48 P.R.R. 859 (1935); *Garcia* v. *Banco [illegible]ular*, 39 P.R.R. 769 (1929); *Santini Fertilizer, Inc.* v. *Burgos*, 34 P.R.R. 830, 832-833 (1926).

D. Defendant Garcia was Plaintiff's debtor at the time of the conveyance. *Nine* v. *Aviles*, 53 P.R.R. 471, 475 (1938).

E. Plaintiff was injured by the conveyance since Plaintiff has no other means by which to recover Defendant

Garcia's indebtedness to Plaintiff inasmuch as Defendant Garcia is without economic means. *Nine* v. *Aviles*, supra.

F. The conveyance of Apartment 10-A by Defendant Garcia to Defendant Pineiro was a fraud against Plaintiff, Defendant Garcia's creditor. 31 L.P.R.A. § 3498; *Nine* v. *Aviles*, supra.

G. The conveyance of Apartment 10-A by Defendant Garcia to Defendant Pineiro was void for lack of consideration ("causa"), 31 L.P.R.A. § 3432; *Febres* v. *Febres*, 33 P.R.R. 931 (1925).

H. Plaintiff is entitled to a judgment rescinding deed number 14, and ordering a reconveyance of title to Apartment 10-A to Defendant Garcia by Defendant Pineiro. 31 L.P.R.A. § 3492(3); *Nine* v. *Aviles*, supra.

I. Plaintiff is entitled to a judgment ordering Defendant Pineiro to account for and return to Defendant Garcia all rents and other profits, with interest, obtained as a result of his having legal title to Apartment 10-A, against which Plaintiff's prior unsatisfied judgment against Defendant Garcia shall constitute a lien, or, alternatively, ordering Defendant Pineiro to indemnify Plaintiff for those amounts. 31 L.P.R.A. §§ 3496, 3499.

J. Bearer notes number 4977 and 4978 and mortgage deed number 32, are void for lack of consideration ("causa"), 30 L.P.R.A. § 65; *Santini Fertilizer Inc.* v. *Burgos*, supra.

K. Plaintiff is entitled to a judgment declaring that any bearer notes secured by mortgage deed number 32, and mortgage deed number 32 itself, are invalid. 31 L.P.R.A. § 3432; *Soto* v. *Feliciano*, 80 P.R.R. 595, 598 (1958).

II. APARTMENT 12-E

L. Applying principles of common law equity as generally applicable in the United States, a constructive trust may be imposed on realty in Puerto Rico under the appropriate circumstances. See 31 L.P.R.A. § 7; *Rossy* v. *Superior Court*, 80 P.R.R. 705 (1958); *Luperena* v. *Transportation Authority*, 79 P.R.R. 438 (1956); *Fernandez* v. *Laloma*, 56 P.R.R. 348, 357 (1940); *In Re Las Colinas, Inc.*, 294 F.Supp. 582, 606 (D.P.R. 1968).

[2] M. A constructive trust may be imposed upon real property that has been acquired with funds wrongfully or fraudulently obtained from Plaintiff. V *Scott on Trusts*, § 507 (3d ed. 1967 and 1978 Supp.); *Restatement of Restitution*, §§ 166, 202, 208(1); *In Re Lela & Co., Inc.*, 551 F.2d 399, 406-407 (C.A.D.C., 1977); *United States* v. *King*, 469 F.Supp. 167 (D.S.C.1979); 76 Am. Jur.2d, Trusts, § 248.

[3] N. A constructive trust may be imposed upon real property in the possession of third persons that has been acquired with funds wrongfully or fraudulently obtained from Plaintiff. V *Scott on Trusts*, § 514.1 (3d ed. 1967 and 1978 Supp.); *Restatement of Restitution*, § 208(1); 76 Am.Jur.2d, *Trusts*, § 257, provided said persons are not good faith purchasers or holders. See 30 L.P.R.A. § 2355.

O. Plaintiff, the constructive trust claimant, must be able to fairly, reasonably or substantially identify or quantify the extent of its equitable interest in the funds which were originally obtained from it wrongfully or fraudulently. *Sonnenschein* v. *Reliance Ins. Co.*, 353 F.2d 935 (C.A.2, 1965); *New Amsterdam Casualty Co.* v. *Waller*, 301 F.2d 839, 844-845 (C.A. 4, 1962); *reversing* 196 F. Supp. 780, 786-787 (M.D.N. C.1961); 76 Am.Jur.2d, *Trusts* § 252.

P. By reason of the wrongful and fraudulent acts committed by Defendant Garcia, as reflected in findings 40

through 43, and 53 through 61, the Academia would have been disqualified from participating in the V.A. education benefits program [38 C.F.R. § 21.4202(a) and (b)(1) and (2) (1975)], wherefore, all of the 178 Treasury checks utilized in purchasing cashier's checks 187204 and 188786 were wrongfully and fraudulently obtained from Plaintiff.

[4] Q. By reason of the wrongful or fraudulent acts of Defendant Garcia committed against the V.A. in connection with her ownership and operation of the Academia, Plaintiff is entitled to a judgment imposing a constructive trust in its favor to the extent of its fairly ascertainable interest in the 178 United States Treasury checks that were utilized as the primary source of funds in purchasing First Federal cashier's checks 187204 and 188786.

R. Defendant Pineiro and Goepp are not bona fide purchasers for value of Apartment 12-E, because:

1. Defendant Garcia acted as their agent, within the scope of her authority, in acquiring title to Apartment 12-E in their names, and Defendant Garcia's knowledge of the wrongful and fraudulent manner in which the funds to purchase cashier's checks 187204 and 188786 were acquired from Plaintiff, constitutes notice thereof to Defendants Pineiro and Goepp. Restatement (Second) of Agency §§ 263, 272 (and comment c.), 274; 76 Am.Jur.2d, *Trusts* § 270; V *Scott on Trusts,* § 476 (3rd ed. 1967 and 1978 Supp.).
2. Defendant Pineiro knew of the use of 27 United States Treasury checks as the principal source of funds to purchase cashier's check 187204, and generally knew or had reason to know of the circumstances under which Defendant Garcia obtained those Treasury checks. *Restatement of Restitution,* § 174; V *Scott on Trust,* §476 (3d ed. 1967 and 1978 Supp.); 76 Am.Jur.2d, Trusts § 271.

3. Defendants Pineiro and Goepp paid no consideration ("causa") for the purchase of Apartment 12-E. No credibility is given by the Court to the testimony of Defendant Goepp to the contrary.

S. Defendants Pineiro and Goepp are not third persons within the meaning of neither 30 L.P.R.A. § 59 nor 30 L.P.R.A. Sec. 2355.

T. Plaintiff has an enforceable constructive trust equitable interest in Apartment 12-E to the extent of 99.55% of its value, representing the pro rata share of the apartment's purchase price on December 1, 1975 which Plaintiff's monies funded.

U. In the alternative, the purchase of Apartment 12-E by Defendants Pineiro and Goepp was a simulated contract [see generally *Hernandez* v. *Sec. of the Treasury*, 86 P.R.R. 12 (1962] for the purpose of concealing Defendant Garcia's ill-gotten gains.

V. Such a simulated contract is null and void because of lack of consideration ("causa"), inasmuch as the proceeds used to purchase Apartment 12-E, i.e., the Treasury checks, belonged to Defendant Garcia, and not to the purported purchasers, Defendants Pineiro and Goepp.

W. The real purchaser of Apartment 12-E was Defendant Garcia, with Codefendants Pineiro and Goepp acting as feigned intermediaries or name lenders. See *Hernandez* v. *Secretary of the Treasury*, supra, at 18-20.

X. Alternatively, if the Treasury checks used to purchase Apartment 12-E were deemed a donation from Defendant Garcia to Defendants Goepp and Pineiro, there is a rebuttable presumption that such a donation was made in fraud of creditors [31 L.P.R.A. Sec. 3498, first paragraph] which presumption was not rebutted by Defendants at the trial.

Y. Plaintiff is entitled to a judgment ordering that title to Apartment 12-E be conveyed to it by Defendants

Pineiro and Goepp. V *Scott on Trusts,* §§ 507, 508.1, 514.1 (3d ed. 1967 and 1978 Supp.); *Restatement of Restitution,* § 208(1).

AA. Plaintiff is entitled to a judgment ordering that 99.55% of all rents totalling at least $92,075, and any other profits obtained by Defendants Pineiro and Goepp, jointly or individually, deriving from their having taken and held legal title to Apartment 12-E, be accounted for and tendered to Plaintiff with interest from the date such rents and profits were received by them, until paid. V *Scott on Trusts,* §§ 511,514.1 (3d ed. 1967 and 1978 Supp.); *Restatement of Restitution,* §§ 157, 205.

BB. Defendants Pineiro and Goepp are entitled to a credit against those amounts due Plaintiff in Paragraph AA above, for taxes or other encumbrances and charges paid by them during the period in which they held legal title to Apartment 12-E. V *Scott on Trusts,* § 479.1 (3d ed. 1967 and 1978 Supp.); *Restatement of Restitution,* § 158, comment b. Defendants Pineiro and Goepp are also entitled to a credit against those amounts due Plaintiff in Paragraph AA above for 0.45% of the value of Apartment 12-E for which Plaintiff's money was not the source of purchase funds.

CC. Defendants Angel Rivera Colon, Sandel Felipe Garcia, Aracelis Martinez, Flor Maria Garcia and Tomas del Carmen Garcia Gonzalez, (herein called the "Mortgagor-Defendants") are holders in good faith of bearer notes guaranteed by a mortgage over Apartments 12-E. Said Mortgagor-Defendants are third parties under the provisions of the Mortgage Law, and hence their liens over Apartment 12-E are valid. See 30 L.P.R.A. Sec. 2355. To the extent by which said Mortgagor-Defendants execute judgments against Apartment 12-E by virtue of their secured notes, Defendants Pineiro and Goepp jointly and severally, shall indemnify Plaintiff in a sum equivalent to the decrease in value of Plaintiff's interest by virtue of the discharging of such encumbrances. In the alter-

native, Plaintiff may seek an order from this Court requiring that Defendants Pineiro and Goepp, jointly and severally, be required to discharge all encumbrances outstanding to the Mortgagor-Defendants. V *Scott on Trusts*, § 521.5 (3d ed. 1967 and 1978 Supp.).

The Clerk shall enter Judgment in accordance with this Decision and Order.

IT IS SO ORDERED.